

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3229 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RATANBEN NATVAR SINH VAGELA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR DP JOSHI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/11/1999

ORAL JUDGEMENT

1. The petitioner was detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act'] by virtue of an order passed by Police Commissioner, Vadodara city, Vadodara, on 19th February 1999 in exercise of powers under sub-section [1] of section 3 of the PASA Act.

2. The detaining authority, in the grounds of detention, considered that, as many as six cases under

the Prohibition Act are registered against the petitioner. The authority also considered statements of three witnesses whose identity has not been disclosed by the detaining authority in exercise of powers u/s 9[2] of the PASA Act by claiming privilege. The detaining authority concluded that the petitioner is a bootlegger as defined under the PASA Act and that, his conduct has resulted into disruption of public order and therefore, detention under the PASA is the only remedy that can be resorted to for preventing the petitioner from pursuing his illegal and antisocial activities.

3. The petitioner challenges the order of detention by this petition mainly on the ground that the detaining authority has not considered the possibility of resorting to a less drastic remedy in the nature of cancellation of bail of the petitioner. The order therefore is vitiated because of non-application of mind by the detaining authority.

4. Ms. Patel, learned Advocate appearing for the petitioner has relied on solely on ground of non-application of mind by the detaining authority.

5. Mr.D.P.Joshi, learned AGP has opposed this petition. He however had to concede that factually the detaining authority has not considered the alternative remedy in the nature of cancellation of bail.

6. In view of the fact that the detaining authority has not considered the possibility of resorting to a less drastic remedy in the nature of cancellation of bail granted to the petitioner, the order can be said to be suffering from the vice of non-application of mind, as has been held by the decision of a Division Bench of this Court [Coram : C.K.Thakkar & A.L.Dave, JJ] in Letters Patent Appeal No. 1056/99 in Special Civil Application No.8650/98 in case of Yunusbhai Hasanbhai Ghanchi v/s District Magistrate, dated 15th September, 1999.

7. Factually, a plain perusal of the order of detention and the grounds of detention indicate that the detaining authority has not considered the possibility of resorting to a less drastic remedy in the nature of resorting to section 437[5] of the Code of Criminal Procedure for cancellation of bail. This is a clear non-application of mind, as has been held by the Division Bench of this Court [Coram : C.K.Thakkar & A.L.Dave, JJ] in Letters Patent Appeal No. 1056/99 in Special Civil Application No.8650/98 in case of Yunusbhai Hasanbhai Ghanchi v/s District Magistrate, dated 15th September,

1999.

8. In view of above, the petition deserves to be allowed on this ground alone and the same is allowed accordingly. The impugned order of detention passed by the Police Commissioner, Vadodara city, Vadodara on 19th of February, 1999 in respect of the petitioner Ratanben Natvarsinh Vaghela, is hereby set aside. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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